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IMPERIAL TRUSTEESHIP

BY

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IMPERIAL TRUSTEESHIP.*

" It is now becoming a commonplace of talk that British policy requires more exact definition, that general terms like Trusteeship are of comparatively little value, and that this country has everything to gain by an authoritative declaration of the rules that are to guide its Colonial administration in protecting the land and labour of backward peoples."—(" The Times," 29th July, 1929, " East Africa—The Next Step.")

A new political party, coming for the first time into responsible power, has found itself called to deal at critical points with a number of crucial issues in domestic, foreign and Imperial policy.

The outstanding Colonial issue involves the whole future of the relations between Europeans and Africans. Action has to be taken upon the Report of Sir E. Hilton Young's Commission. The leading recommendation of that Report† was that " the field of native interests should now be clearly defined and safeguarded, that there should be a clear idea now and at each stage of development what British policy both as regards natives and immigrants is to be, and that this policy should be affirmed not merely as that of one political party but with the concurrence of all."

Another important decision is challenged by a Bill just passed in Southern Rhodesia proposing to restrict the right of natives to buy or occupy land. Legislation affecting native interests in Southern Rhodesia is reserved for sanction by the Imperial Government, which thus remains in this respect trustee for the natives. The right proposed to be abrogated is guaranteed in the King's Letters Patent, establishing the Colony's constitution.

The principle expressed in the Covenant of the League of Nations (Art. 22), that Imperial Powers must be regarded as trustees for the interests of peoples under their sovereignty " not yet able to stand by themselves under the strenuous conditions of the modern world," was not new to British Imperialism. It had long been accepted in regard to our rule in India. In regard to Colonial possessions, however, the use of the word trusteeship had not been familiar. The reason for this difference was that Englishmen of the Victorian period habitually thought of our Colonies merely as outlying British communities under the sovereignty of the Crown, in which British traditional principles

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* Reprinted by permission from the *Contemporary Review*, September, 1929.

† Report on Closer Union of the Dependencies in British East and Central Africa (Cmd. 3234).

of justice, liberty and equality of civic privilege could not fail to be respected and enforced.

The words of the Covenant, that "the well-being and development of such peoples form a sacred trust of civilisation," imply that the duty of European Imperialism towards these communities is to be regarded as similar to that declared by Britain in India, namely, that they are to be helped to become "**able to stand by themselves.**"

But this was not the only declaration made in the Covenant. By Article 23 all members of the League "**undertake to secure just treatment of the native inhabitants of territories under their control**": that is to say, Great Britain and all the other parties to it pledged themselves to adhere to those principles which Englishmen had already been wont to claim without any misgiving were in force throughout the King's Dominions.

In 1923 the Imperial Government announced that it recognised in regard to all the African territories under its authority the principles* of trusteeship declared in Article 22. And, the same notable document went a good deal further in saying what they meant, namely, that in regard to such territories:—

"The interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former must prevail. . . . In the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population; and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races. . . . In their opinion the *annexation* of the East Africa *Protectorate,* which . . . has thus *become* a *Colony* . . . in no way derogates from this fundamental conception of the duty of the Government to the native races. As in the Uganda Protectorate, so in the Kenya Colony, the principle of trusteeship for the natives, no less than in the mandated territory of Tanganyika, is unassailable. This paramount duty of trusteeship will continue, as in the past, to be carried out under the Secretary of State for the Colonies by the agents of the Imperial Government, and by them alone. . . . Meanwhile the administration of the Colony *will follow the British traditions and principles which have been successful in other Colonies.*"

These declarations would naturally and congenially convey to most home-dwelling Englishmen a fairly clear understanding of what was meant. Unfortunately, however, owing to some of the methods adopted during the last thirty or forty years of Imperial development in Africa, and in the understanding of a good many who have been active in that development, these pronouncements, and their natural and straightforward interpretation have appeared disconcertingly paradoxical. As the Hilton Young

* Kenya White Paper (Cmd. 1922).

Report puts it: " They have in some quarters come to be regarded either as a threat of injustice, which it is right to resist, or as a pious declaration, which was never intended to be taken seriously."

The reason for this is that, during that period of the development of our new Imperial Estates which began after the " Partition of Africa " (i) the interests of the African natives have not been regarded as paramount, and no one engaged in the process has ever pretended they were, or ought to be, so regarded; far less that where they conflicted with those of Europeans the latter must give way and (ii) the Imperial Government has in various general relations and in various particular instances omitted or failed to secure " just treatment of the native inhabitants under their control," and has markedly departed from " the British traditions and principles which have been successful in other Colonies."

In order to illustrate what it is to which the British Government pledged itself both in the Covenant and in its own subsequent declarations, I will briefly recall the leading case in which the proceedings of British Imperialism diverged from the traditional principles to which these subsequent declarations have appeared to promise a wholesome and very needful return.

The motives which weighed with British statesmen for extending our rule over African territories in the Partition of Africa were chiefly two: (1) the economic importance of securing sources of minerals and materials which would otherwise have been appropriated by other Governments: (2) the desire to protect Africans from destruction and exploitation. That period followed one of effectual reluctance on the part of British Governments, Conservative and Liberal alike, to extend the Empire. That reluctance was conquered by the pressure of new economic motive; but at first it gave way only partially, and largely, in fact, because extension commended itself to many who hoped thereby to save Africans from the slave trade and other modes of European aggression. For it was becoming impressively manifest that, whether European national Governments assumed sovereignty there or not, those countries would be penetrated, and the land and labour of their inhabitants exploited by Europeans. Not only did the Congo " Free State," so called, teach the world that lesson, but Africa was alive with prospecting and concession-hunting expeditions, the precursors of organised enterprises sufficiently well armed and financed by cosmopolitan capital to be capable of dealing, without the support of any national Government, with any African tribal people and eating out the

heart of their country, as the Boers had eaten up lands in South Africa, and would have eaten up much more had British Government at the Cape not established " Protectorates " over Basutoland, Bechuanaland, and other coveted territories.

When Mr. Rhodes was pressing his scheme for British Cape-to-Cairo dominion, he met with stubborn resistance on the part of the Home Government against any project of annexation, or even of establishing further Protectorates. It was insisted that he must make his own arrangements with native chiefs and a Company be formed to exercise over British subjects, but not over natives, any powers of Government that might be found necessary.

Lord Salisbury, in granting the British South Africa Company's Charter, promised and intended to safeguard the rights and property of the local natives. All that Rhodes had acquired from Lobengula, their paramount chief, was leave to seek and extract minerals in such locations as he should assign. It was expressly presumed that the Company had no concession of land and no right to alienate farms or township holdings to Europeans. The Charter specially stipulated that " careful regard shall always be had **to the customs and laws** of the class or tribe or nation, **especially with respect to the holding, possession, transfer and disposition of lands.**" The Company from the outset ignored this obligation, Dr. Jameson having, in fact, promised, by an agreement kept secret from the British authorities, to grant farms and " loot " to all who joined in his expedition. When these operations began to develop and Lobengula protested, Lord Ripon sent a telegram pointing out that they were unauthorised and requesting that Jameson should be instructed to " moderate his proceedings." The first Matabele War followed; and Lobengula's death and the ensuing confusion made it difficult to maintain control: but thenceforward the Company entirely disregarded that clause and claimed and exercised unrestricted ownership as in fee simple of all the land in the country. After the Company's further proceedings had provoked the second Matabele War, the Colonial Office abandoned its earlier position, and in the Order in Council of 1898 merely prescribed " that the Company shall from time to time *assign to the natives* land sufficient for their occupation, whether as tribes or portions of tribes and suitable for their agricultural and pastoral requirements." This change of attitude towards native land rights was made in order to facilitate the Company's policy of developing the country as an agricultural property, Mashonaland having failed to pay as a gold-mining proposition. The assignment of even such reserves was delayed for more than twenty years,

Europeans in the meanwhile picking out the lands most advantageous for settlement. When reserves were at length defined, in 1920, there were still 264,700 natives left living as tenants at will, and subject to rent, on lands outside of them, most of which were according to native " customs and laws " their own ancestral property. In 1925 the Southern Rhodesian Land Commission reported that there were then 274,300 natives so living. These natives have no legal property whatever in their holdings. " Large numbers,"* say the Commissioners, " are being given notice to leave the land as farms become more extensively developed and large estates are cut up. . The late Government inaugurated a policy of charging each adult male who occupied Crown Land a rental of £1 per annum." The Hilton Young Commission calls attention to the need for safeguarding rights of natives similarly situated on the enormous properties alienated in Nyasaland and Northern Rhodesia.

Thus British Imperialism having, in framing the Charter, shown its intention " to follow the British traditions and principles which have been successful in other Colonies," that is to say, to respect native land rights, had, by the year 1898, been induced in furtherance of the capitalist system of European settlement, to forsake those principles and to adopt in their stead those of the Boer voortrekkers in dealing with Africans. The British Imperial principles had been †established with success within the sphere of British authority at the Cape, but had been repudiated in the Boer extensions of occupation northwards, where, on any land desired by Europeans, the native only remains on sufferance as a squatter, a labour tenant or a bond labourer. That was the principle which the Chartered Company followed in " developing " Southern Rhodesia, which persists to-day even on the lands still in the hands of the Government, and which it is proposed to maintain.

In 1917 the Company were declared by the Privy Council to have no title to unalienated Rhodesian land, which was adjudged to belong to the Crown. Similar judgments, Orders in Council, and legislation, have made all lands (not alienated or excepted) in Northern Rhodesia, Swaziland, Nyasaland, and Kenya, likewise the property of the Crown; and in ‡Kenya reduced the natives even in the reserves to the position of Crown tenants at will, with-

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* Report of S. Rhodesia Land Commission, 1925. See especially ss. 168-173 and 310-313.

† See " The Cape Colour Question," and † " Bantu, Boer and Briton," by Professor W. M. Macmillan (Faber & Gwyer).

‡ See Judgment of Sir Jacob Barth, C.J., 1921.

out any kind of legal property in their holdings. This is the greatest scandal of all our dealings with Africans, and it is felt and has been protested against both by natives and by their local European sympathisers as the strongest injustice to which they have been subjected.

No wise man would desire to upset the Privy Council's decisions. Juris ically fictive, imaginative, arbitrary, and even cynical as they are, they established the only basis on which an Imperial Government desiring to protect and do justice to natives could find a firm footing. Moreover, they embody the very sound principle that, fundamentally, land belongs to the King, that is, to the State, a principle not uncongenial to African native ideas. But those judgments cannot be held to imply that the Crown owns those lands without obligation to regard estates and interests legally, customarily or equitably established in them. Even where a country is annexed by conquest (as is held to have been the case in Southern Rhodesia) such private interests are not expropriated. Far less could they be held to have been in a Protectorate established by treaty. Yet this position has been established in Kenya.

Persons even in high official and judicial positions have talked of African natives as having no ideas about property in land, or any laws or customs that British Courts could respect. That was the Boer attitude. It is very convenient in colonising African "white man's country." But the Southern Rhodesia Land Commission were at some pains to insist on the fact that the "customs and laws with respect to the holding, possession, transfer and disposition of lands," in that territory are well established and ascertainable. So are they elsewhere. They are unwritten, and are therefore not familiar to many Europeans, but the discussion and settlement of questions arising upon them forms an important duty of tribal chiefs and elders.

We have declared ourselves the natives' trustees. Natives have repeatedly claimed that their land rights, laws and customs, ought to be respected. According to their convictions it is iniquitous that they should be ignored, and that when they have never vacated their lands or alienated their interests in them the Crown should ignore those rights, impose rents upon them, or sell to Europeans and leave them in the positions I have referred to. Any trustee for natives must be deemed trustee for their interests in real property as against the domain of the King. The King is as much bound in this situation to do justice to natives' rights as to any other estates in real property encumbering his ownership.

Yet when the Masai sought legal protection from being evicted, for the benefit of a leading settler, from the reserve assigned to

them in perpetuity by a formal treaty, the Court disclaimed competence to deal with their action against the Crown. I recall this notorious bit of chicanery because it furnishes a typical illustration of the reasons why Kenya settlers were staggered and even derisive when it was announced that the Government was trustee for natives and their interests paramount.

The course which any Government professing trusteeship ought to follow is clear. It ought to ascertain, recognise and uphold in its Courts, as against the Crown as nominal residuary owner, the rights and interests in land existent in native law.

Within the Reserves the equities can be decided as now by the native Councils, backed by the authority of the Crown. Outside of the reserves either these rights when proved ought to be asserted by the Trustee and recognised by the Courts, in which case the charging of rents, as in Southern Rhodesia, is an extortion—or should it be desired on legitimate grounds of public expediency to expropriate them, they ought to be indemnified as in civilised countries. This obligation has, in fact, been often admitted where the Colonial Office has had control, but not always or fully. It has been and is ignored in regard to lands alienated by the Chartered Company or the Rhodesian Government. Elementary principles of British justice demand that these anomalies should be remedied or redressed, and that the concessions to Africander voortrekkers' principles, which gained prevalence between 1893 and 1898 in Rhodesia, should be reversed. If this obligation were not otherwise obvious it is made incontestable by our declaration of trusteeship for natives, by our renewed declaration that we would deal with them justly and by the crowning declaration that we would follow the British traditions and principles which have been successful in other colonies.

The Afrikander practice of ignoring native land rights and leaving the native in the position of a squatter, labour tenant or bond servant on the land, has largely conduced in South Africa to the unhappy state of relations between Europeans and natives, reflected in the dominant issue (White versus Black) of the recent General Election. The political party now in power there frankly disclaims British Imperial principles, and also, apparently, the promise of just treatment in Article 23 of the Covenant. In the recent controversies about the Colour Bar and the Cape franchise, its apologists (in the London " Times " and before the local Parliamentary Committee) have expressly declared that considerations of justice are quite irrelevant to the questions at issue.

I have written thus lengthily about land because in that connection it is so especially obvious that any Government committed

to the three declarations that I have quoted must act on principles absolutely distinct from the principles—equally clearly defined—of Afrikander dealings with native rights—which have so influentially prevailed both in Rhodesia and Kenya.

The Hilton Young Report discusses helpfully the meaning to be assigned to the phrase "Paramountcy of native interests." What is required, they consider, is:—

> "first, to define what are the essential native interests; secondly, to settle what are the conditions which must be created and preserved in order to give those interests a fair field in which to start and an adequate measure of protection and assistance for their development, and, thirdly, to allow nothing to interfere with those conditions. Subject to these requirements, the Government must do all in its power to help the immigrant communities."

They rank native interests in the following order: Land, economic development, Government Services and taxation, labour, education, administration and political institutions. They put land first, and political institutions last. In Kenya the topic of political institutions has been treated as the primary subject to be discussed. The reason is no mystery. It has been neatly expressed in a speech of an elected member of the Legislative Council: "The position of the labour market is serious. You will never solve the problem until you have control of the country—when you have that you will immediately solve it. The policy of the Government should be that every male native must work. . . . If that policy were to be applied we should have the politicians at home determined to do us in. There is no solution except to get control of the country in our own hands."

But the Commissioners rightly conceive the order of precedence. For, as they warn us, echoing the words of Sir George Grey in respect of the same issues, long ago, at the Cape, in dealing with Africans the most important thing is that we should act justly, and it is in regard to land that Europeans have dealt with natives in the manner which appears to them most unjust. No African native accepts or will ever accept as just the principles on which capitalist Imperialism in South and East Africa, as distinguished from British Imperial policy on its old lines, has dealt with their interests in land. Next to land, African natives feel the burden and question the justice of European rule in regard to taxation. Labour comes next. The compulsion to labour is veiled and is for the most part indirectly applied through land policy and taxation. Tribal Africans are accustomed to duties of *corvée* for tribal purposes. But they feel as unjust and oppressive the increased demand and rigour of compulsory public labour which has been introduced in Kenya and Uganda. They

also detest the Registration and Pass Laws enacted in order to keep them at work. No " trustee " government can pretend to believe that these laws were enacted in natives' interests, or in any interest save that of immigrant European employers. With regard to Education, ambitious natives desire to get what they may, but they are not stung by any sense of injustice in not obtaining it, except in so far as a few of them realise that much of their taxes goes to educate Europeans, and comparatively little for natives.

Next in importance to Land, then, comes Taxation. Here our duty as trustees is obvious. It was in Southern Rhodesia under the Chartered Company's rule that a new departure was made in British Colonial financial practice by imposing upon the poorest class of the population* heavy direct poll or hut taxes. The example was followed in Kenya. It is unnecessary to discuss how far these taxes were fixed with the motive of making natives work for white men. If we are to follow " the principles which have been found successful elsewhere " (and which, where departed from, have been vindicated by unhappy experience) we shall approach the question of what is proper taxation simply from the point of view of comparative equity and capacity to pay. The Commission on East African Government appointed by Mr. Thomas in 1924 and disbanded by Mr. Amery was asked to examine into the incidence of taxation. Mr. Ormsby-Gore's sub-committee, which visited East Africa, did not report on the equity of rates of taxation; all it said on the subject was that the primary reason why Kenya natives went to work on estates was to earn money to pay their taxes, and that more of the taxation levied there from natives appeared to be spent for the benefit of Europeans than for their own. These questions still demand to be cleared up. The nominal direct tax on natives in Kenya is 12s. per adult male. From the figures of official returns it would appear that the actual incidence must be at averages of from 23s. to 30s. per adult male. The nominal Kenya tax is twice as high as those of Nyasaland and Northern Rhodesia. If natives leave their homes to work, the maximum they can earn on liberally-paying estates is 12s. a month. A local Report on labour supply alleges that the average value of native production in the reserves does not amount to more than from 70s. to 90s. per annum per family, of which not more than 30s. worth is saleable produce. Manifestly, such rates of taxation on very impecunious people are grossly excessive.† Quite independently of the ques-

* In addition to rents for occupying their own land.

†The Governor of Kenya did institute an enquiry into this question, but the results have never been published. They were, I am told, too inconvenient.

tion whether the produce of taxation is fairly spent the official statistics present an incontestable case for enquiry, approached from the point of view of a single-minded trustee for the natives.

The dictum that native interests are to be paramount, is one that can easily be ridden to death or dialectically to be absurd. But it is not necessary to claim so much as that. All that is required is resolutely to repudiate and to eliminate the Afrikander ideas of the proper and legitimate manner of dealing with natives which have been allowed to infect British colonial policy in one corner of what is still called the British Empire. Not more is necessary than the observance of Article 23 of the Covenant—to be just, and to act in accordance with the British traditions and principles which have been found successful in other colonies. The Colonial Office knows well what these are. The general duties of Government are equally obligatory in respect of the rights of all citizens, whether European, Indian or native. Its primary duty is justice: not development. That is good Magna Carta doctrine. So far as the Government has assumed the rôle of trustee for the interests of people " not yet able to stand by themselves," the duty of the Colonial Office is to ensure that the personal interests of its wards are clearly recognised, represented, promoted and vindicated, either through executive help or, when sufficient, by means of the Courts, so as to ensure that those interests do hold their own under the conditions we are imposing on them.

The whole of the early development of Kenya Colony has been warped, as can be proved by a hundred quotations from the speeches and writings of those settlers who the Hilton Young Report declares have obtained an altogether undue predominance in the direction of policy by being handled on the basis of the assumption, not that native interests were to be paramount, not that the Government were trustees for native interests, but that the paramount duty of Government was to promote the rapid settlement and exploitation by Europeans of the country's resources, and to use all its power and influence to promote this development by getting natives to work on estates: the interests of the natives coming in only at the tail-end of this process through the economic and educational benefits to be gained by them in the earning of wages and through " contact " with Europeans.

The only safe foundation of policy—for it is one which no Englishman will repudiate and the observance of which these Africans were promised in the name of the Queen—is what I have indicated: just treatment, their rights in land, refusal to discriminate between privileges on racial grounds, refusal to

revive the fallacy, which in the West Indies after the abolition of slavery went far to ruin those colonies, of assuming that the progress and prosperity of mixed populations depend on weighting public policy in favour of estates cultivation, and adjusting taxation and privileges to subserve the maintenance of a "labour supply." That policy may enable some Europeans to get rich quick, as a few (especially land-jobbers) have done in Kenya: but it is not necessary for the healthy development of European estate economy, and it becomes very quickly disastrous and ruinous to it.

With regard to political institutions, which the Hilton Young Report put last, there is at this moment less essential need for overhauling existing arrangements than in regard to any of the other topics. The only just course which experience has proved to be a safe and prudent one is to establish for the electoral political franchise (within whatever area is administered under one Council) a common standard of qualification to develop political and administrative experience through institutions of local Government, and, until the franchise for an elective legislature admits of a fair general representation to keep the control of policy in the hands of the Crown's representatives.

What is urgent is to continue the investigation and criticism intended by the first Labour Government of the actual quality of the administration. A critical and honest review of the existing conditions in all the East African colonies is needed to satisfy Parliament that those just and equal principles of British Imperial rule which prior to the Imperial development period were assumed as axiomatic are, in fact, being observed. The fiscal and financial administration of Kenya and similar colonies, and not only their land and labour policy need to be criticised by the Colonial Office from the point of view of the natives for whom it is trustee as stringently as those aspects of administration have repeatedly had to be overhauled in the West Indies and other Crown Colonies, where the control or dictation of policy has been similarly in the hands of one economic class.

When, in the light of such reliable understanding definition is given to the principles in accordance with which we propose to exercise our trusteeship, I should feel very little fear of any difficulty in their acceptance by all political parties in this country, or of any risk of the maintenance of such policy being upset by local class interests.

The laws and customs of Africans, recognised in their own communities as of sacred authority, are essentially a structure of

civilisation. The idea of law, which it is the function of the chief or Council to enforce, is a social possession which no Imperial power professing to aim at building up civilisation can afford to tamper with. If cherished and approved institutions are treated as negligible, demoralisation is quickly engendered, whilst if the rights they embody are overridden merely or even apparently because it is advantageous to Europeans to override them, confidence in the justice of European civilisation is also made impossible: all social sanctions are weakened and the claim that the King acts justly is rendered in the eyes of the natives an empty pretence. The authority of chiefs, the native equities in regard to land, have far too often been superseded from deliberate motives of European Colonial policy. A demoralised and uncontrolled African proletariat is thus being created, which it is part of the same policy, as we see to-day in South Africa, to exclude from equal rights in European political and industrial institutions. This, and the accumulating resentment the process engenders, are the encroaching danger in Africa. No enduring African civilisation can be built up on such lines.

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